IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

Civil Application No.2072 of 2007
(For Condonation of Delay)
In
Review Petition St.No.17199 of 2007
In
Writ Petition No.6509 of 2004

Sarjerao Ramkrishna Sonawane,
Since deceased through his
legal heirs :

1-A. Shalini wd/o.
Sarjerao Sonawane

1-B. Anant Sarjerao Sonawane,

1-C. Amrut Sarjerao Sonawane. .. Applicants
(Org.Defendants)

Vs.

Kashibai Changdeo Vhatkar,
since deceased through
legal representatives :

1-A. Mrs.Sulochana Shivaji Pol,

1-B. Ashok Changdeo Vhatkar,

1-C. Vijaya Changdeo Vhatkar. .. Respondents
(Org.Plaintiffs)

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AND

Civil Application No.2073 of 2007
(For Bringing Legal Heirs on Record)
In
Review Petition St.No.17199 of 2007
In
Writ Petition No.6509 of 2004

Sarjerao Ramkrishna Sonawane,

Since deceased through his
legal heirs :

1-A. Shalini wd/o.
Sarjerao Sonawane

1-B. Anant Sarjerao Sonawane,

1-C. Amrut Sarjerao Sonawane. .. Applicants
(Org.Defendants)

Vs.

Kashibai Changdeo Vhatkar,
since deceased through
legal representatives :

1-A. Mrs.Sulochana Shivaji Pol,

1-B. Ashok Changdeo Vhatkar,

1-C. Vijaya Changdeo Vhatkar. .. Respondents
(Org.Plaintiffs)

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Review Petition St.No.17199 of 2007
In
Writ Petition No.6509 of 2004

Sarjerao Ramkrishna Sonawane,
Since deceased through his
legal heirs :

1-A. Shalini wd/o.
Sarjerao Sonawane

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Shri P.D.Dalvi, Advocate for the Applicants.

Shri C.G.Gavnekar, Advocate for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 31ST AUGUST, 2007

P.C.

1. Heard. The applicants herein are seeking relief in the nature of review of the order dated 24th November, 2006 passed in Writ Petition No.6509 of 2004, and for that purpose prays for condonation of delay of 220 days in approaching the Court as also to bring themselves on record as the legal representatives of the original petitioner in the said writ petition.

2. Brief facts relevant for disposal of the applications are that the respondents herein filed eviction proceedings against the original petitioner for evicting him from the suit premises on the ground that the premises are required for personal occupation by his son Suresh. The Trial Court decreed the suit

and the decree was confirmed by the lower appellate court. The original petitioner thereupon filed Writ Petition No.6509 of 2004. The said petition came up for hearing on 24th November, 2006 whereupon after hearing the learned advocates for the parties, the petition was rejected. However, meanwhile, the said Suresh had expired on 20th January, 2005. After disposal of the writ petition, the original petitioner also expired on 7th December, 2006.

3. It is the contention on behalf of the applicants that since the entire matter relating to the litigation in relation to the suit premises was looked after by the original petitioner, the applicants had no knowledge about the same and having learnt about the same, they have filed the present applications, and hence the delay.

4. The main grievance of the applicants in the review petition is that the said Suresh for whose benefit the possession of the premises was sought for by the original petitioner, had expired much prior to the disposal of the writ petition and at the time of disposal of the said petition, this fact was not brought to the notice of this court and had it been brought to the notice of the court, perhaps the order

dated 24th November, 2006 would have been otherwise, since the cause of action for eviction did not exist in favour of the respondents on the date of disposal of the writ petition on account of the death of said Suresh for whose benefit the original petitioner was sought to be evicted from the suit premises. In this background, the applicants have filed these applications, one for bringing themselves on record as the legal representatives of the deceased original petitioner, another for condonation of delay of 220 days in filing the present review petition, and the third one is the review petition for review of the order dated 24th November, 2006 in Writ Petition No.6509 of 2004.

5. It is well settled law that in a case where the parties have absolutely no case for review of the original order of which the review is sought for, the question of condonation of delay in filing the application for review does not arise at all. Bearing the same in mind, and upon hearing the learned advocates for the parties and on perusal of records, it is apparent on the face of record that the eviction of the original petitioner was sought for from the suit premises on the ground of bonafide requirement for personal use of the said Suresh, son of the

original petitioner, and the suit in that regard was decreed and the said decree was confirmed by the lower appellate court. In other words, both the fact finding Courts had arrived at a clear finding about the bonafide need of the premises for occupation of the said Suresh and such decree had attained finality pursuant to the decree passed by the lower appellate court. The writ petition was disposed of solely on the ground that there was no case made out of any jurisdictional error by the lower appellate court while decreeing the suit and therefore, there was no case for interference in exercise of powers under Article 227 of the Constitution of India. It is also a settled law that the writ petition is not a continuation of a suit but is an independent proceeding.

6. In the circumstances, therefore, for all purposes, the decree of eviction of the original petitioner from the suit premises had attained finality during the life time of said Suresh. Consequently, a valuable right had accrued in favour of the said Suresh and the said right survives to his legal heirs. Being so, merely because the fact of death of said Suresh, which had occurred prior to the disposal of the Writ Petition No.6509 of 2004, was not

brought to the notice of the Court at the time of disposal of the said writ petition on 24th November, 2006 could not have made any difference for the purpose of disposal of the said writ petition nor it could have influenced in any manner the order that was to be passed in the said writ petition in exercise of power under Article 227 of the Constitution of India. Considering this aspect, there is absolutely no case for review of the order dated 24th November, 2006 on the ground on which it is sought to be reviewed.

7. Attention was sought to be drawn to the decision of the Apex Court in **Kedar Nath Agrawal (Dead) & Anr. v. Dhanraji Devi (Dead) by LRs. & Anr.,** reported in (2004)8 SCC 76. In the said decision, it was held that a conjoint reading of Section 21(1)(a) and Section 21(7) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 makes it clear that where the possession is sought by the landlord on the ground of bona fide requirement and during the pendency of the application, the landlord dies, his legal representatives can prosecute such application on the basis of their own need in substitution of the need of the deceased. Obviously, the decision relates to the death of a person, for whose benefit the possession of

the premises was sought for by evicting the tenant from such premises, during the pendency of the eviction proceedings before the fact finding court. It clearly refers to "the application" in terms of the provisions of law under the said Act. Obviously, it would not apply to the stage on conclusion of eviction proceedings by final decree passed by the competent Court. Hence, the said decision is of no help to the applicants to seek review of the order dated 24th November, 2006 as in the case in hand the person for whose benefit the possession of the premises is sought for had not expired prior to the decree for eviction and such decree had attained finality during his lifetime.

8. In the facts and circumstances of the case, I do not find that any case is made out for condonation of delay in filing the Review Petition as also for bringing the legal representatives of the original petitioner on record, nor there is a case made out for review of the order dated 24th November, 2007. Hence, both the civil applications along with the review petition are dismissed.

(R.M.S.KHANDEPARKAR, J)